



State of Idaho

DEPARTMENT OF WATER RESOURCES

ES

1301 North Orchard Street, P.O. Box 83720, Boise, Idaho 83720-0098

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DIRK KEMPTHORNE
GOVERNOR

KARL J. DREHER
DIRECTOR

February 25, 2004

Wildhorse Partners, LLC
c/o David R. Stoecklein
P.O. Box 856
Ketchum, ID 83340

RECEIVED

MAR 01 2004

Department of Water Resources
Eastern Region

RE: **Pending Notice of Violation
Illegal Diversion of Water**

Dear Mr. Stoecklein:

The Idaho Department of Water Resources (Department) has been notified by the Water District 34 Watermaster that water was being diverted to a pond on your property from a point of diversion located in the NW ¼ of the NE ¼ of Section 35, Township 08N, Range 22E. The Watermaster observed that water was being diverted from Warm Springs Creek to the pond on February 23, 2004. The Watermaster observed that there was no return flow from the pond to Warm Springs Creek. This diversion is not legal for the following reasons.

1. Permit 34-7581 lapsed on October 7, 2003, because you did not submit proof of beneficial use or a request for an extension of time to the Department. The Department sent you a proof due notice on July 31, 2003 and a lapse notice on October 7, 2003. Because permit 34-7581 has lapsed, you do not have a valid water right or permit authorizing diversion of water at this location between October 16 and April 30. Diverting water without a valid right to do so is a violation of Idaho Code §42-351(1).
2. Permit 34-7597 and lapsed permit 34-7581 have several conditions of approval with which this diversion does not comply. Diverting or using water not in conformance with a valid water right is also a violation of Idaho Code §42-351(1). The conditions of approval include, but are not limited to, the following.

“.... 5. Prior to diversion of water under this right, the right holder shall install and maintain a measuring device and lockable controlling works of a type acceptable to the Department as part of the diverting works.”

“.... 7. A new diversion structure shall be constructed for diversion of water from Warm Springs Creek.”

“.... 8. Pond storage volume shall be measured and reported to the Department and Big Lost River Irrigation District (BLRID).”

“.... 10. Water will be diverted through the recreational pond and back to Warm Springs Creek at a rate not to exceed 1.0 cfs....”

“.... 11. Prior to diversion of water under this right, the right holder shall install a measuring device of a design approved by the Department to measure the amount of water entering the reservoir and a device to measure the amount of water released from the reservoir to calculate the amount of water, if any, lost in transit through the pond.”


“.... 12. The right holder shall determine the pond seepage rate after initial pond filling, and shall identify changes in the seepage rate over time at periodic intervals.”

The watermaster reports that he took measures to shut off this diversion on February 23, 2004. Department records indicate that the former watermaster also had to take action in December 2002 to shut off a similar illegal diversion of water at this location. The current watermaster has been instructed to report any further attempts to divert water at this location to the Department.

Diversion of water to the pond will not be legal between October 16 and April 30 unless you obtain a valid permit covering this period of use, and meet all applicable conditions of approval included on the permit. Diversion of water to the pond between May 1 and October 15 will not be legal until all applicable conditions of approval for permit 34-7597 have been met. The Department will issue a Notice of Violation and Cease and Desist Order if you resume diversion of water to the pond without a valid permit or without complying with the conditions of approval. Please note that issuance of a Notice of Violation can result in monetary civil penalties pursuant to Idaho Code §42-1701B.

If you have questions regarding this notice, please contact Jennifer Berkey at 208-327-7871.

Respectfully,


Jennifer Berkey
Water Distribution Section

Enclosure

cc: Robert Duke, Watermaster, Water District 34
IDWR Eastern Region
James Speck, Speck & Aanestad, P.O. Box 987, Ketchum, ID 83340
Files 34-7581, 34-7597, NOV 2004-02-154